



Office of the Attorney General

State of Texas

July 16, 1992

DAN MORALES  
ATTORNEY GENERAL

Mr. Ernest A. Emerson  
State Fire Marshal  
Texas Commission on Fire Protection  
P. O. Box 2286  
Austin, Texas 78768-2286

OR92-405

Dear Mr. Emerson :

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 16235.

The State Fire Marshall has received a request for a copy of an investigation report concerning a fire. We understand that the investigation remains active. You claim that the report may be withheld under section 3(a)(8) of the Open Records Act, which permits withholding of:

records of law enforcement agencies and prosecutors that deal with the detection, investigation, and prosecution of crime and the internal records and notations of such law enforcement agencies and prosecutors which are maintained for internal use in matters relating to law enforcement and prosecution.

Having reviewed the report, we conclude that most of it may be withheld under section 3(a)(8) at this time. See Open Records Decision No. 134 (1976) (copy enclosed) (except for basic factual information, material in State Fire Marshall's report falls within protection of section 3(a)(8)). We have marked the portions of the report which do not fall within the protection of section 3(a)(8).

You also claim that the report may be withheld under section 3(a)(3), which exempts from required disclosure:

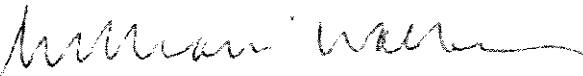
information relating to litigation of a criminal or civil nature and settlement negotiations, to which the state or political

subdivision is, or may be, a party, or to which an officer or employee of the state or political subdivision, as a consequence of his office or employment, is or may be a party, that the attorney general or the respective attorneys of the various political subdivisions has determined should be withheld from public inspection.

You indicate that when it completes its investigation, the office of the State Fire Marshall may refer this matter to a district attorney for prosecution. *See, Gov. Code § 417.007(e).* In these circumstances, we believe that such district attorney rather than the State Fire Marshall is the proper person to assert a section 3(a)(3) claim regarding the investigation report. Therefore, we do not resolve at this time whether any of the requested information might be excepted under section 3(a)(3); but confine our disposition here to a determination under section 3(a)(8). If you believe that material in the report which we have not determined to be excepted under section 3(a)(8) should nevertheless be withheld under section 3(a)(3), you should advise the district attorney that he is the proper party to make such section 3(a)(3) claim.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR92-405.

Yours very truly,



William Walker  
Assistant Attorney General  
Opinion Committee

WW/lmm

Ref.: ID# 16235

Enclosure: Open Records Decision No. 134  
Marked Documents

cc: Mr. Leo Villarreal  
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